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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/336,636	06/18/1999	KAZUTOMO HASEGAWA	FUJA-16.217	7893

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KATTEN MUCHIN ZAVIS ROSENMAN  
575 MADISON AVENUE  
NEW YORK, NY 10022-2585

EXAMINER

KUMAR, PANKAJ

ART UNIT	PAPER NUMBER
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2631

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/336,636

Applicant(s)

HASEGAWA ET AL.

Examiner

Pankaj Kumar

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-35

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9.
10. ☐ Other: \_\_\_\_\_

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1. The process steps or structural limitations are able to stand alone in the claims and therefore limitations in the preamble do not hold patentable weight.
2. Applicant has argued that the DSL recitation in the preamble gives "life, meaning and vitality" to the claims (page 3). This is respectfully traversed since as per giving life, the elements of the claims are not organic and thus not defined as a living creature and therefore it is inconceivable for them to neither have nor give life. If applicant is referring to life as the inorganic elements existing and performing an action, then even without the DSL recitation, the elements of the claims exist and can perform the actions.
3. Applicant's above statement is also respectfully traversed since as per giving meaning and vitality, the elements of the claims can exist and can perform the actions even without the DSL recitation and therefore have meaning and vitality. The process steps or structural limitations are able to stand alone in the claims and therefore limitations in the preamble do not hold patentable weight.
4. Applicant's argument that the SONET system of Tyrrell cannot have hyperframes is respectfully traversed. Tyrrell's system uses an optical medium. Optical mediums, such as optical fiber, can have data within hyperframes since it is just one of the many ways or rearranging data. And it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Also, it has been held to be within the general skill of a worker in the art to select a known material (in this case selecting a hyperframe rather than some other data format) on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

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5. Applicant's arguments that the SONET system of Tyrrell cannot have near end cross talk or far end cross talk are respectfully traversed. Tyrrell's system uses an optical medium. Optical mediums, such as optical fiber, can have near end cross talk and far end cross talk since not medium is perfect and these are just two of the many ways data can be degraded. During reception of the transmitted data, Tyrrell's system can be subject to near end cross talk and far end cross talk.

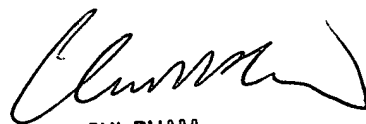
6. As per discriminating the kinds of durations based on a status of the sliding window, Tyrrell teaches, based on the following quote from col. 16 2<sup>nd</sup> full paragraph, far end cross talk duration with a count of far end errors. Far end errors occur due to far end cross talk. Also, each STS interface can be considered a sliding window. Since far end cross talk is represented as one component and there are a total of three components in Tyrrell based on the following quote, any combination of the other components can be considered the near end cross talk. Here is the quote being referred to in this paragraph: (Tyrrell col. 16 2<sup>nd</sup> full paragraph "Path Status consists of three components. The first is far end B3 errors which are counted in each STS interface. These error counts are sent to the Controller in a VI channel through the TSI/TSM. The second is the STS Path Yellow indicator which is bit 5. The received STS Path Yellow status bit is placed in a VI channel bit and sent through the TSI/TSM to the Controller accompanied by an I bit on any valid change of state. The transmitted STS Path Yellow indicator bit value is sent by the Controller in a VI channel bit to the STS interface through the TSI/TSM. The third is bits 6-8 which are unassigned.") Therefore, SONET systems also distinguish NEXT (near end cross talk) from FEXT (far end cross talk).

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7. As per detecting the phase of a carrier signal, the office has analogized the phase of the carrier signal to the barker codes taught in Tyrrell. Figure 39 in Tyrrell shows various SBI pulses such as PSBI\_CLK, which change in phase and allow determination of data. Paragraph 394 in Tyrrell teaches, "The SBI is synchronized by a unique framing pattern in time slot zero. The pattern uses bits 1-7 and is chosen to be 0100111. This code is a recommended U.S. Standard pattern for PCM synchronization for Aerospace applications and is also a 7 bit Barker Code." Applicant's allegation that there is not FFT in Tyrrell is traversed since the applicant's claims do not specify FFT either.

8. As per generating a sliding window based on a periodic noise duration, applicant has only made an allegation that Tyrrell does not teach this and has not submitted any arguments which are contrary to Tyrrell teaching such a limitation and thus has made a statement without specifically pointing out how the language of the claims patentably distinguishes them from the references. Tyrrell teaches the periodic noise duration limitation with (Tyrrell: "Capacitors C18, C11, C14 and C23 provide approximately a 1 ms time constant to filter against noise and long transitionless periods of the NRZ signal on the data lines"; thus periodic noise duration is represented).

9. Applicant's claims are so broadly worded that they can be read on another invention such as that of Tyrrell. It is suggested that applicant more narrowly claim its subject matter with additional limitations and incorporate them outside of the preamble.



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